



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for cleaning cost, for the cost of re-renting the premise, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matters

At the outset of the hearing the landlords requested to amend their application to reduce their claim for loss of rent from \$9,600.00 to \$2,400.00 as they are only seeking the loss of June 2020 rent. To reduce the amount of cleaning from \$300.00 to \$150.00. The balance of the landlords claim remains unchanged.

I have allowed the landlords request to reduce their claim against the tenants. I do not find this prejudicial. Therefore, I have allowed the above amendment.

### Issues to be Decided

Are the landlords entitled to a monetary order for loss of rent and cleaning costs?

Are the landlords entitled to monetary compensation for the cost of re-renting the premise?

Are the landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on September 1, 2019 and was to expire on August 31, 2020. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenants paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00.

The parties agreed that the tenants gave notice to end the tenancy on March 23, 2020 with an effective vacancy date of April 30, 2020.

The parties agreed a move-in condition inspection report was completed.

The landlords claims as follows:

a.	Loss of rent for June 2020	\$2,400.00
b.	Cleaning	\$ 150.00
c.	Cost of re-renting the premise	\$1,200.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	

### Loss of rent for June 2020

The landlords testified that the tenants breached their fixed term tenancy agreement when they gave notice to end their tenancy earlier than the Act allows.

The landlords testified that they advertised the premise on a popular website for the same rent. The landlords stated they had some showings; however due to the state of emergency they did not have very many applicants. The landlords stated that they were able to find a new renter and they paid the security deposit on May 30, 2020; however, their tenancy did not commence until July 1, 2020. The landlords stated they loss rent for June 2020 and seek to recover the loss of rent in the amount of \$2,400.00.

The tenants' advocate argued that the landlord did not do everything possible to re-rent the rental unit. The advocate stated that the landlord should have immediately lower the rent due the state of emergency to attract new tenants. The advocate stated that the landlord should have advertised on more websites and the landlord should have provided more attractive photographs of the unit. The advocate stated the landlord did not mitigate the loss.

### Cleaning

The landlords testified that the tenants did not leave the rental unit reasonable clean as the oven and sink were left dirty. The landlords stated that they paid someone to do the cleaning and seek to recover the cost of \$150.00. Filed in evidence are photographs. The photographs show the oven was left unclean. The photographs of the sink does not support it was dirty, only unpolished. The landlords did not provide a copy of the receipt or proof of payment for my consideration.

The advocate for the tenants stated that the landlord did not do a move-out inspection and the rental unit was left reasonably clean.

### Cost of re-renting the premise

The landlords testified that due to the tenants breaching the tenancy agreement they had to pay a real estate agent fee of half the monthly rent to find a new renter. The landlords confirmed that they did not provide a copy of the receipt to prove their loss or the contract with the real estate agent for my consideration.

The tenants' advocated testified that the tenants did not agree to pay for the cost of re-renting and the landlord would have incurred this cost in any event.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Loss of rent

How to end a tenancy is defined in Part 4 of the Act.

#### **Tenant's notice (fixed term)**

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

...

In this case, I am satisfied that the tenants breached their fixed term agreement when they gave notice on March 23, 2020 to end the tenancy April 30, 2020. Under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was August 31, 2020 as stated in the tenancy agreement.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, I am satisfied that the landlords advertise the rental unit as soon as possible and at the same rent the tenants were paying. The landlords found a new renter on May 30, 2020 and their tenancy began on July 1, 2020. There is no requirement for the landlord to list the property on every website possible or to provide more attractive picture of the unit. The landlords are only required to take appropriate steps to minimize the loss, which I find they have done so. I find it more likely than not that it was due to the state of emergency that was issue at the time, that impacted the landlords' ability to finding a new renter earlier. Therefore, I find the landlords are entitled to recover loss of rent for June 2020 in the amount of **\$2,400.00**.

#### Cleaning

I am not satisfied that the landlords have suffered any loss due to the oven being left unclean. The landlords did not provide a copy of the receipt that they said they paid or proof of such payment for my consideration. Therefore, I dismiss this portion of the landlords claim due to insufficient evidence.

#### Cost of re-renting the premise

In most circumstances where a tenant ends the fixed term earlier than the Act allows the landlords are entitled to recover the cost of re-renting the premise. However, I am not satisfied that the landlords incurred any loss. The landlords did not provide a copy of the receipt or proof of payment for my consideration. Therefore, I dismiss this portion of the landlords claim due to insufficient evidence.

I find that the landlords have established a total monetary claim of **\$2,400.00** comprised of the above described amounts. I decline to award the cost of the filing fee as the landlords' claim was significantly reduced and they were not successful with most of their claim.

I order that the landlords retain the security deposit of **\$1,200.00** and pet damage deposit of **\$1,200.00** in full satisfaction of the claim.

Conclusion

The landlords are granted a monetary order and may keep the security deposit and pet damage deposit in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 09, 2020

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Residential Tenancy Branch